

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of AT&T
Communications of the Midwest, Inc., for
Arbitration of an Interconnection
Agreement with Qwest Corporation
Pursuant to 47 U.S.C. § 252(b).

PREHEARING ORDER

This matter came on for prehearing conference before Administrative Law Judges Steve M. Mihalchick and Kathleen A. Sheehy on June 12, 2003, in the Minnesota Public Utilities Commission's Large Hearing Room, 121 Seventh Place East, Suite 350, St. Paul, Minnesota.

The following persons appeared at the prehearing conference:

Steven H. Weigler, AT&T Law Department, 1875 Lawrence Street, Suite 1524, Denver, CO 80202, for AT&T Communications of the Midwest, Inc, and TCG Minnesota, Inc. (AT&T).

Jason D. Topp, Qwest Corporation, 200 South 5th Street, Room 395, Minneapolis, MN 55402, and Mary Rose Hughes, Perkins Coie, L.L.P., 607 – 14th Street NW, Washington DC 20005-2011, for Qwest Corporation (Qwest).

Priti Patel, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, MN 55103, for the Department of Commerce (Department).

Jeanne M. Cochran, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, for the Residential and Business Utilities Division of the Office of Attorney General, (RUD-OAG).

Joy Gullikson, Onvoy, 300 S Highway 169, Minneapolis, MN 55426, for Onvoy.

Lesley Lehr, MCI, 638 Summit Ave, St. Paul, MN 55105, for MCI.

Richard J. Johnson, Moss and Barnett, 4800 Wells Fargo Center, 90 South Sixth Street, Minneapolis, Minnesota, 55402 for the Minnesota Independent Coalition (MIC).

Kevin O'Grady, Analyst, Minnesota Public Utilities Commission, 350 Metro Square Building, 121 East Seventh Place East, St. Paul, MN 55101 for the Commission staff.

On June 16, 2003, AT&T filed a request for reconsideration regarding whether observers should be allowed to receive trade-secret responses to information requests. Several responses were filed. The issue is addressed below.

PROCEDURE

1. This proceeding shall be conducted in accordance with Minn. R. 7811.1700.

PARTIES AND OBSERVERS

2. The original parties to this proceeding are AT&T and Qwest. Minn. R. 7811.1700, subp. 10, allows only the Department and the RUD-OAG to intervene as parties. They have filed Petitions to Intervene and those Petitions were granted at the prehearing conference. AT&T, Qwest, the Department, and RUD-OAG are referred to as "a Party" or "the Parties" in this Order.

3. Minn. R. 7811.1700, subp. 10, allows others wishing to participate to attend hearings as observers, file written comments, and request the opportunity for oral argument. At the prehearing conference, Onvoy and MCI requested to participate as observers and their requests were granted. On June 19, 2003, the MIC filed a Request for Participation as an Observer. That request is granted.

4. Minn. R. 7811.1700, subp. 10, significantly limits the role of others wishing to participate in an arbitration. Therefore, in this proceeding, Observers may attend the hearing, including trade secret portions if they have signed an appropriate protective agreement. To make observation of the hearing meaningful, Observers may attend prehearing status conferences, and the Parties shall serve electronic copies of prefiled testimony, briefs, memos, and notices upon Observers, including trade secret portions if they have signed an appropriate protective agreement. The Parties are not required to serve information requests or responses thereto upon Observers. Observers may not make information requests, question witnesses, sponsor witnesses, or submit evidence in any other form.

5. The final date for filing a Request to Participate as an Observer is June 23, 2003.

6. Any person allowed to participate in this proceeding after the date of this Order shall be bound by the terms of this Order.

SCHEDULE

7. The following schedule is established:

- a. June 23, 2003: Qwest response to arbitration and petitions to participate as observer due.
- b. June 27, 2003: AT&T and Qwest testimony due.
- c. July 1, 2003: Final date for initial discovery requests.
- d. July 2, 2003: Telephone status conference at 3:00 p.m. Central Daylight Time. AT&T will provide a conference bridge and notify the Parties and Observers of the numbers.
- e. July 11, 2003: Department testimony due by 12:00 noon.
- f. July 11, 2003: Comments of all Parties on authority and discretion of the arbitrators also due by 12:00 noon.
- g. July 14, 2003: RUD-OAG testimony due by 12:00 noon.
- h. July 14-18, 2003: Hearing commencing at 9:00 a.m. daily in the Commission's large hearing room.
- i. July 28, 2003: Initial briefs due.
- j. August 1, 2003: Reply briefs due.
- k. August 15, 2003: Arbitrator's recommended decision due.
- l. August 25, 2003: Exceptions due.
- m. September 19, 2003: Commission decision due.

FILING OF DOCUMENTS

8. All prefiled testimony and other documents shall be filed with the Administrative Law Judges and served in accordance with the schedule above. Filing with the Administrative Law Judges and service shall be effective upon receipt of a copy by email or other means.

9. All prefiled testimony shall be in question and answer format or other easily understood and easily referenced format.

10. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

- a. Prior to the issuance of the Report of the Administrative Law Judge, two copies of all documents shall be delivered or mailed to the Administrative Law Judges and an electronic copy shall be emailed to the Administrative Law Judges. **No information requests or responses shall be filed with or sent to the Administrative Law Judges.**

b. Following the Report of the Administrative Law Judges, all documents shall be filed with the Executive Secretary of the Commission and the Administrative Law Judges shall be removed from the service list.

11. Email and paper copies of all documents shall be served in accordance with the attached service list. The list will be revised as necessary by the Administrative Law Judges. Service shall be made according to the most current service list provided to the Parties by the Administrative Law Judges.

12. Proof of service shall be filed with each filed document or within three business days thereafter.

13. Any document or information filed with or supplied to the Commission or the Commission staff shall be served upon every Party.

DISCOVERY

14. All requests for information shall be made by email followed-up by regular mail to the Party from whom the information is sought with a copy to all other Parties. The Party responding to the information request shall provide the information requested to the requesting Party by 3:00 p.m. CDT of the fourth business day after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The response to the information request need not be supplied to other Parties unless specifically requested. Information requests received after 3:00 p.m. CDT on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

15. In the event the information cannot be supplied within the required response time, the responding Party shall notify the requesting Party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by either of the Administrative Law Judges upon motion of a Party. Such motion should be made by email notice and a telephone conference among the Administrative Law Judge and affected Parties.

16. Parties asked to provide "Confidential Information" may require the requesting Party to comply with the terms of a Protective Agreement and Order.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

17. Prefiled testimony shall be received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judges, Parties, and Observers by email no later than three days prior to commencement of the hearing.

18. The Parties shall attempt to agree on the order of presentation of issues and witnesses.

19. Each witness shall be allowed 15 minutes at the beginning of his or her testimony to summarize and highlight their prefiled testimony and to add new testimony in rebuttal to the testimony of other Parties' witnesses.

20. Except for good cause shown, objections by any Party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting Party states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other Parties prior to commencement of the hearing. If an objection is made by a Party, the Party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony which is not objected to shall be admitted during the hearing without the necessity of laying foundation for the testimony.

June 19, 2003

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
KATHLEEN A. SHEEHY
Administrative Law Judges